

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: Original
POSITION: Oppose

BILL NUMBER: SB 160
AUTHOR: G. Cedillo

BILL SUMMARY: Student Financial Aid: Institutional Aid Eligibility

This bill would require the Trustees of the California State University (CSU) and the Board of Governors of the California Community Colleges (CCC), and request the Regents of the University of California (UC), to establish procedures and forms to enable any student who is exempt from paying nonresident tuition under the provisions of AB 540 (Chapter 814, Statutes of 2001), including an undocumented individual, to be eligible for institutional financial aid. The bill defines institutional financial aid as financial assistance offered by a public higher education institution, including grants, scholarships, work-study, and loan programs, but excluding CCC Board of Governors' fee waivers. Current CSU policy requires residency status for a student to receive institutional financial aid, whereas UC provides institutional aid to *documented* students who receive the nonresident tuition waiver under AB 540.

FISCAL SUMMARY

The UC estimates that this bill would result in additional costs of about \$800,000 in 2009-10 and \$1.6 million in 2010-11, based upon the number of undocumented students who were exempt from paying nonresident tuition under AB 540 in 2007-08. These estimates assume that the institutional aid awards would begin in January 2010, thus providing half-year benefits to students enrolled in the 2009-10 academic year. Similarly, the Department of Finance (Finance) estimates that this bill would result in costs of \$4.9 million in 2009-10 and \$9.8 million in 2010-11 to provide institutional aid to AB 540 eligible CSU students. These numbers reflect a conservative estimate because this bill would create incentives for more AB 540 students to enroll. This bill would also create cost pressure likely in the millions of dollars to provide additional financial assistance (in the form of grants and loans) to eligible CCC students.

To the extent this bill authorizes award of Cal Grants to these students, additional costs would range from approximately \$7 million to \$12 million in the first year and would compound in subsequent years for renewals and new cohorts of Cal Grant awards each year thereafter that would total between \$39 million and \$66 million by 2013-14, assuming the same number of new awards each year. The total cumulative cost of providing Cal Grant awards to these students over a four-year period would range from \$93 million to \$155 million.

In addition, the bill may require minor, absorbable local costs for community college districts to revise forms if necessary to reflect procedures promulgated by regulations of the Chancellor, pursuant to authority contained in this bill. To the extent that more substantive changes would be necessary, the costs would likely be a reimbursable state mandate.

COMMENTS

Finance is opposed to this bill for the following reasons:

- In 2006, 2007, and 2008, the Governor vetoed similar legislation (SB 160, SB 1, and SB 1301, Cedillo) on the basis of the state's limited ability to finance additional higher educational aid benefits

Analyst/Principal (0384) S. Swan	Date	Program Budget Manager Jeannie Oropeza	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

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to undocumented students, and a concern that it would have penalized students who reside in the state legally by reducing the financial aid they rely upon to attend college.

- The bill's provision allowing UC, CSU, and the CCCs to provide institutional aid to these students could limit the financial aid awards provided to other financially needy students. This would drive potentially significant cost pressures on the state's General Fund to provide additional institutional aid funds to these segments or could drive pressure for higher fees at UC and CSU.
- Further, defining institutional financial aid as including grants that are offered by a UC, CSU, or CCC campus can be construed to include Cal Grants, which could result in additional General Fund costs in the tens of millions of dollars annually. The UC and CSU campuses offer financial aid assistance in the form of a package that consists of various sources of aid, such as federal Pell Grants, Cal Grants, loans, work-study, as well as institutional grants.
- This bill is premature. A lawsuit filed in December, 2005, which argued that AB 540 violates federal law to the extent that it provides a benefit for non-U.S. citizens that is not also provided to U.S. citizens, is currently under review by the California Supreme Court.

ANALYSIS

A. Programmatic Analysis

This bill would make any student, including an undocumented individual, who is exempt from paying nonresident tuition under current law eligible to receive institutional financial aid at UC, CSU, and the CCCs. Specifically, the bill would request the UC Regents, and request the CSU Trustees and the Board of Governors of the CCCs, to establish procedures and forms that enable these students to be eligible to receive institutional financial aid awards. This measure specifically exempts the Board of Governors Fee Waiver program from applicability.

Pursuant to AB 540, a student who attends high school in California for at least three years and graduates from a California high school or its equivalent is exempt from paying nonresident tuition at UC, CSU, and the CCCs. Students who are eligible for this exemption include undocumented students and those students who are U.S. citizens but cannot establish residency. If the student is an alien without lawful immigration status (i.e. undocumented), he or she must have filed an affidavit stating that the student has filed an application to legalize their immigration status or will file such an application as soon as they are eligible to do so. Both undergraduate and graduate students qualify for the exemption.

A lawsuit was filed in 2005 that argues that AB 540 violates federal law (U.S.C. 8 1623) to the extent that it provides a postsecondary education benefit for non-U.S. citizens that is not also provided to U.S. citizens. On September 15, 2008, the Third Appellate District of the California Court of Appeal reversed a trial court's dismissal of this lawsuit. The UC filed a petition asking the California Supreme Court to review the case and to reinstate the trial court's dismissal of the case. While the Supreme Court has agreed to rehear the case, UC believes that it is unlikely that a decision will be reached before 2010. In the meantime, UC will continue to provide the AB 540 non-resident tuition exemption. Current law, enacted through AB 1543 (Chapter 19, Statutes of 2002), states that UC, CSU, and the CCCs are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief if a state court determines that the exemption of nonresident tuition is unlawful.

This bill would state legislative findings and declarations that the bill's provision for institutional financial aid awards is a state law within the meaning of U.S.C. 8 1621(d). This appears to be an attempt to take advantage of a federal law that allows a state to make an undocumented immigrant eligible for a public benefit.

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B. Fiscal Analysis

The UC stated that 1,941 students qualified for resident tuition under AB 540 in 2007-08, and estimated that 572 of these students were either undocumented or semi-documented, making them ineligible for financial aid. (Nonresident *documented* citizens currently qualify for institutional aid at UC.) The UC estimates a cost of \$1.6 million to provide institutional aid to these students, about \$2,800 per student. Since the bill would not go into effect until January 1, 2010, Finance assumed half-year costs of \$800,000 in the 2009-10 academic year, and full-year costs of \$1.6 million in 2010-11.

Data on the number of students who are exempt from nonresident tuition under AB 540 is not available for CSU. Finance estimates that this bill would result in costs of \$4.9 million in 2009-10 and \$9.8 million in 2010-11 for CSU. This estimate is based upon the number of all AB 540 students who attend UC (including documented nonresident students) as a percentage of total undergraduate enrollment, multiplied by the average institutional aid grant of \$2,790 that CSU projected for undergraduate students in 2009-10. (Nonresident students are not currently eligible for institutional aid at CSU, even if they are documented U.S. citizens.) These costs are likely to be higher, given that both undergraduate and graduate students would qualify for institutional financial aid under this bill.

According to the Chancellor's Office, the CCCs awarded approximately \$34.8 million in institutional financial aid in 2007-08 to currently eligible students (above and beyond the \$225 million allocated for Board of Governors fee waivers). Of this amount, approximately \$20 million was provided from Proposition 98 General Fund monies and the remainder was provided from other institutional sources. This bill would create cost pressure likely in the millions of dollars to provide additional financial assistance (in the form of grants and loans) to students who are exempt from paying nonresident tuition under AB 540.

To the extent this bill authorizes award of Cal Grants to these students, additional costs would range from approximately \$7 million to \$12 million beginning in 2010-11 and would compound in subsequent years for renewals and new cohorts of Cal Grant awards each year thereafter that would total between \$39 million and \$66 million by 2013-14 assuming the same number of new awards each year. The total cumulative cost of providing Cal Grant awards to these students over a four-year period would range from \$93 million to \$155 million. These estimates are based upon similar legislation from 2007 that would have made AB 540 students eligible for Cal Grants.

In addition, the bill may require minor, absorbable local costs for community college districts to revise forms if necessary to reflect procedures promulgated by regulations of the Chancellor, pursuant to authority contained in this bill. To the extent that more substantive changes would be necessary, the costs would likely be a reimbursable state mandate. Any regulation development costs by the Chancellor would be minor and absorbable within the annual community college state operations budget.

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
6440/UC	SO	No	C	\$800	C	\$1,600	C	\$1,600	0001
6610/CSU	SO	No	C	\$4,900	C	\$9,800	C	\$9,800	0001
6870/Comm College	SO	No		-----	See Fiscal Summary	-----			0001
6870/Comm College	LA	Yes		-----	See Fiscal Summary	-----			0001
7980/Student Aid	LA	No		--	C	\$7,200 - 12,000	C	\$17,600 - 29,400	0001